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# Colorado Economic Recovery Accountability Board Meeting Summary December 17, 2009 2:00 p.m. – 4:00 p.m.

## **MEETING DATE**

December 17, 2009 Colorado History Museum Boettcher Auditorium Denver, CO 80203

## **MEETING PARTICIPANTS**

#### A. Board Members:

Don Elliman (chair), Ray Baker, Taryn Edwards, Treasurer Cary Kennedy, André Pettigrew, Admiral Truly, Secretary of State Bernie Buescher, Tony Hernandez

#### B. Guests:

Wade Kloos, Elizabeth Estrada, Russ Nelson, Jim Blair, Corky Kyle, Gary Dixon, Rick Lawrence Bruce Hamon, Hal Warren, Seth Firmender, Maran Garrett, Stephanie Adams, Kelli Bennett, Gete Mekonnen, Amy Mueller, Sherry Jackson, Khadija Haynes, Bennie Milliner, Jeanne Shrene, Rene Valdez, Jeff Wassenaar, Mickey Ferrell, Bob Murphy

#### C. Governor's Office

Mark Cavanaugh, Chris Smith, Myung Oak Kim, Brenda Morrison, Lindsey Tannenbaum, Kristina Boggus, Linda Gallegos

## **MEETING SUMMARY**

# A. Introduction

Board Chairman Elliman welcomed board members and visitors.

## B. CERAB Staff Updates

# 1. Reporting Presentation by Chris Smith.

The next reporting cycle begins in 2 weeks. They are waiting for clarification guidance from OMB on the job calculation. Specifically how to calculate the denominator; what is the available work period. The Controllers office and OIT have improved the systems that worked well in the past. The expectation is that the reporting will go smoother than October.

2. 1512 Jobs Analysis Report by Chris Smith. The CERAB staff will be doing an analysis of the data they saw in October. They are setting up some logical tests based on what they believe is the most consistent guidance from the federal agencies about the different data elements. They will be contacting the recipients and inquire as to why certain things appear to be out of guidance. They are testing against financial and job analysis. They are looking at things such as whether or not the award amount exceeds the expenditure. In some cases it's not. This is most likely because they are reporting full federal expenditure instead of just the ARRA expenditure. CERAB staff is finding that in most cases it's a lack of understanding of the guidance rather than reporting wrong information. This report can be found at Colorado.gov/recovery.

- **3. Risk Management report by Chris Smith and Mark Cavanaugh**. The CERAB staff is working with Board member Admiral Truly to look at the risk management issue. The approach they are taking in regard to risk management has to do with prioritization in terms of what areas might be a concern. They are also meeting with the departments and sharing data and developing simple, but robust risk management plans. This includes what the departments have documented and what they need to continue to do. After the State has reviewed what the CERAB staff has done in regard to this subject, the Board and the State will look at whether or not there is a need for outside assistance.
- **4. Buy American Executive Order by Mark Cavanaugh.** The Governor recently signed the Executive order regarding the Buy American Provision in the Recovery Act. The Executive Order emphasizes the use and requirement by the Recovery Act to use American products. If state agencies are unable to use American products, they must request a waiver, and post that request on line as soon as it has been made. Some areas where American products are not available are in water projects; specifically filters that are only available outside the United States.
- **5.** Audit Report by Mark Cavanaugh. The State has 3 ongoing audits. The GAO (Government Accountability Office) has come out with a fourth audit that is available on Colorado.gov/recovery. The other 2 audits are out of the State Auditor's office. One is a contract audit which is known as a single audit. When the State receives federal dollars they are required to do some cost reporting auditing around those dollars. The 3rd audit focuses on the State Fiscal Stabilization Funds and the jobs counting in particular. It is looking at the 1512 reporting from a performance perspective in regard to SFSF.
- **6. National Recovery Board News-Non-Reporters list by Chris Smith.** The Federal National Recovery Board is analyzing the reporting data on a nationwide level. They recently came out with Non-Reporters list; approximately 4300 recipients of awards who did not submit information in October. They are conducting outreach to those individuals to ensure they report in January. Most of the non-reporting issues were a result of technical issues. They also released 2 other lists. One is the Omissions list and the other is the Significant Errors list.
- C. Denver Report by Amy Mueller, Deputy Chief of Staff and Stephanie Karayannis Adams, Budget & Management for the Denver Mayor's office.

They used their existing grant process in regard to the ARRA funding. They also used a third party vendor to help them apply for grants. Additionally they met with the State ARRA team and attended a conference for local government in Washington, DC. The City has formed an oversight committee that meets monthly that is open to the public, an internal management team that meets weekly to discuss reporting and other issues, and a working team that administers the grants.

This PowerPoint presentation can be found at Colorado.gov/recovery under Accountability Board/Meeting Information.

## D. Adams County Transportation Project

#### 1. Hamon Construction

Bruce Hamon, owner of Hamon Construction presented. Mr. Hamon stated that he had concerns about the competitive bid process. He reported that his company has been involved in 2 bid projects amounting to over \$30 mil., and that the low responsible bidder was not used. He stated that the failure to do so was allowed in spite of the efforts of his and other companies to correct and bring the issue to the attention of the agencies involved. It was Mr. Hamon's belief that violations of the bid process have occurred. He stated that representatives from Adams County and CDOT have refused to meet with Hamon Construction to discuss the issue.

Mr. Hamon requested that the Board suspend all monies to the Adams County project until such time a complete open forum can be determined as well as the appropriateness of the award that is now in place. He also asked that the Board request the Legislative Audit Committee to audit CDOT and Adams County's for violations in awarding the bid.

Don Elliman stated that the Board did not have the authority to suspend payments. They have the authority to report back to the Governor when they see instances where they believe the process has not been adequately served. They are also not in the position to request a Legislative Audit Committee audit.

Rick Lawrence of Lawrence Construction also spoke. Mr. Lawrence stated that he was concerned about the transparency of the bidding process. Specifically Mr. Lawrence was referring to the Best Value process. According to Mr. Lawrence bids were discussed and awarded in a closed room. He then stated that the results were not made public thereby prohibiting the ability to challenge those awards.

Don Elliman requested that Mr. Lawrence email him directly or contact Mark Cavanaugh and Kyle Miller with specific instances where state agencies have failed to comply with the competitive bid process in awarding ARRA projects .

**2. CDOT- Mickey Ferrell, Federal Liaison for CDOT presented.** He stated that representatives from CDOT will be meeting with Hamon Construction the following day.

Ray Baker inquired about CDOT's delay in meeting with Hamon. Jeff Wassenaar from CDOT's Contract and Market Analysis Branch stated that they followed their standard protest process.

**3. Adams County- County Attorney Hal Warren presented.** Mr. Warren stated that they followed the bid process correctly according to their procedure and CDOT's procedure. He stated that he has met with the attorney for Hamon Construction as well as Mr. Hamon. According to Mr. Warren, the attorney for Hamon Construction spoke to the board of county commissioners in a public meeting. He believes that the dispute is because one item (the erosion control supervisor) was left blank. The bidder stated that they were utilizing the superintendent and erosion control supervisor as one position and that it did not affect the fixed cost. It was determined by Adams County and CDOT that the erosion control supervisor could perform other duties as long as they followed the specifications. According to Mr. Warren, the contract was awarded to the lowest bid.

Don Elliman recommended that either Hamon Construction or CDOT report at the next CERAB meeting on the resolution of their meeting. He also suggested that Hamon Construction meet with board member Taryn Edwards.

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# E. Lakewood Report by Mayor Bob Murphy

Mayor Murphy reported that the net direct impact of ARRA funds to Lakewood was \$2.3 mil. A PowerPoint presentation can be found at Colorado.gov/recovery.

## F. Public Comment

With no public comment or further business the meeting was adjourned. The next CERAB meeting is tentatively set for January 21st, 2010. The location is yet to be determined.